

DRAFT #1 FOR PUBLIC REVIEW: VACANT BUILDING MAINTENANCE ORDINANCE

AN ORDINANCE AMENDING THE CITY OF LAS VEGAS VACANT BUILDING MAINTENANCE ORDINANCE NO. 05-06 OF THE REVISED ORDINANCES OF LAS VEGAS NEW MEXICO ADOPTING PROVISIONS FOR GOVERNING VACANT BUILDINGS LOCATED IN THE COMMERCIAL ZONING DISTRICTS WITHIN THE BOUNDARIES OF THE METROPOLITAN REDEVELOPMENT AREA PLAN, (DOWNTOWN LAS VEGAS; SEE EXHIBIT A)

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAS VEGAS:

Section 1. SHORT TITLE. This ordinance may be known and cited as the Vacant Building Maintenance Ordinance.”

Section 2 FINDINGS AND INTENT.

(A) The New Mexico Metropolitan Redevelopment Code (3-60A-1 to 3-60A-48 NMSA 1978) provides cities in New Mexico with the powers to correct conditions in areas or neighborhoods within the municipalities which “substantially inflict or arrest the sound and orderly development” within the city .

(B) Ordinance 10-32 making certain findings and determinations pursuant to the NM Metropolitan Redevelopment Code, and approving the Las Vegas Downtown Action Plan/Metropolitan Redevelopment Area Plan.

(C) Vacant buildings located in the commercial zoning districts within the boundaries of Metropolitan Redevelopment Area Plan, (Downtown Las Vegas; see attached exhibit A MRA Boundary Map) are being neglected and are not being cleaned up or maintained for years by owners or agents in control of the properties, which are significantly reducing the attractiveness of the area and having a negative effect on the surrounding area.

(D) Vacant buildings throughout the downtown area are resulting in negative community impacts contributing to neighborhood deterioration, reducing property values and are contrary to providing safe, clean, livable and healthy communities for families and businesses.

(E) Vacant buildings throughout the downtown are connected to viable buildings and are a fire and safety risk to the entire block

(F) The purpose of this ordinance is to ensure that building owners’ responsibilities to clean up and maintain vacant properties are performed in a timely and consistent manner, and to protect the health safety and welfare of the community.

Section 3. DECLARATION OF NUISANCE. Vacant buildings that are not maintained and licensed in conformity with this ordinance are declared a public nuisance.

Section 4. DEFINITIONS. For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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OWNER. Includes any person that holds record title to the property and any person entitled under any agreement to the control or direction of the management or disposition of the building or premises or of any part of the building or premises where the violation in question occurs.

VACANT BUILDING. A commercial building which is lacking habitual presence of natural persons who have a legal right to be on the premises, or at which substantially all lawful business operations or residential occupancy has ceased. Multi-family residential property containing 5 or more dwelling units shall be considered vacant when substantially (60 percent) all of the dwelling units are unoccupied.

Lodging and multi-unit commercial properties shall be considered vacant when substantially (60 percent) of the units are unfit for use or unoccupied. Notwithstanding the foregoing, if the City Manager determines that a substantial, unoccupied portion of an otherwise occupied structure has the potential for becoming a nuisance or having a negative effect on the area, the City Manager may notify the property owner that a vacant building maintenance license shall be required for the unoccupied portion of the otherwise occupied building.

If a vacant building that is used for the storage of materials related to a commercial enterprise, the owner must possess a valid business license consistent with said business. If stored materials are not related to a commercial enterprise and determined by the City Manager or designee to be a nuisance, fire hazard or having a negative effect on the neighborhood, the owner may not obtain a vacant building maintenance license until such time as the unacceptable conditions are addressed.

Section 5. VACANT BUILDING MAINTENANCE LICENSE

(A) Application. Application for a vacant building maintenance license shall be made on a form provided by the City Manager and verified by the owner.

(B.1) Inspection by City. The City Manager or designee shall cause an inspection of the premises for the purpose of determining that it will be safe for entry by fire fighters and police officers in time of emergency, and that the building complies with the vacant building maintenance standards set forth in Section 5(D). If the building does not so comply, the City Manager or designee shall promptly specify the deficiencies and may specify the time for completion of the work. The City Manager may conditionally grant a license while the owner completes the work necessary for the building to comply with the standards set for in Section 5(D).

(B.2) Inspection by Assessor's Office. The City Manager shall coordinate an inspection of the premises with the San Miguel County Assessor's Office for the purpose of determining proper valuation and assessment of stored materials.

(C) Issuance. The City Manager or designee shall issue a vacant building maintenance license on being satisfied after having inspected the building that the building is in compliance with the vacant building maintenance standards set forth in Section 5(D); otherwise, the City Manager or designee shall deny the license or may conditionally grant the license while the owner completes the work necessary to comply with the standards.

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(D) Vacant Building Maintenance Standards.

(1) Building openings. Doors, windows, areaways and other openings are weather tight and secured against entry by birds, vermin and trespassers. Missing or broken doors, windows and opening coverings must be replaced or covered with one half inch CDX plywood, painted grey, weather protected, and tightly fitted to the opening and secured by screws or bolts.

(2) Roofs. The roof and flashings are sound, tight, will not admit moisture, and drained to prevent dampness or deterioration in the walls or interior.

(3) Drainage. The building storm drainage system is adequately sized, installed in an approved manner, functional and discharged in an approved manner.

(4) Building Structure. The building is maintained in a good repair, structurally sound, free from debris, rubbish and garbage, and sanitary, so as not to pose a threat to the public health or safety.

(5) Structural Members. The structural members are free of deterioration and capable of safely bearing imposed dead and live loads.

(6) Foundation Walls. The foundation walls are plumb, free from open cracks and breaks, and vermin proof.

(7) Exterior Walls. The exterior walls are free of holes, breaks, and loose or rotting materials. Exposed metal and wood surfaces are protected from the elements and against decay or rust by application of weather coating materials, such as paint or similar surface treatment as needed or determined by the City Manager or designee.

(8) Decorative Features. The cornices, belt courses, corbels terra cotta trim, wall facings and similar decorative features are safe, anchored, and in good repair. Exposed metal and wood surfaces are protected from the elements and against decay or rust by application of weather coating materials, such as paint or similar surface treatment as needed or determined by the City Manager or designee.

(9) Overhanging Extensions. All balconies, canopies, marquees, signs, metal awnings, stairways, fire escapes, standpipes, exhaust ducts and similar features are in good repair, anchored, safe and sound. Exposed metal and wood surfaces are protected from the elements and against decay or rust by application of weather coating materials, such as paint or similar surface treatment as needed or determined by the City Manager or designee.

(10) Chimneys and Towers. Chimneys, cooling towers, smokestacks, and similar appurtenances are structurally safe. Exposed metal and wood surfaces are protected from the elements and against decay or rust by application of weather coating materials, such as paint or similar surface treatment as needed or determined by the City Manager or designee.

(11) Accessory and Appurtenant Structures. Accessory and appurtenant structures such as garages, sheds, and fences are free from safety, health, and fire hazards.

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(12) Premises. The premise on which a structure is located is clean, safe and sanitary and does not pose a threat to the public health or safety.

(13) External Appearance. The external appearance of the structure and premises shall be maintained in such a manner that the vacant building will not be unreasonably detrimental to property values or the character of the neighborhood as determined by the City Manager or designee.

(14) Electrical power or natural gas shall be provided to vacant and unoccupied Buildings or structures to power all mechanical equipment to maintain a minimum ambient interior temperature. A night light shall be placed in the interior of any vacant residential Building or Structure on all levels of the building. All vacant buildings shall have the water shut off at the street level and shall have the building properly weatherized so as to prevent the bursting of water pipes, unless the building is served by a heating system that requires the use of water. If property owner chooses to disconnect utilities a \$500 fee will be required for annual maintenance.

E. Insurance.

(1) Certificate of Insurance. Upon application for a vacant building maintenance license, the owner shall provide a certificate(s) of insurance for commercial liability, if a commercial building; a certificate of insurance for personal, premise or both types of liability insurance; and a Fire Legal Endorsement, if applicable.

(F) Designation of Local Agent.

(1) In addition to other information required by the City Manager, the application shall include the name, street address and telephone number of a natural person 21 years of age or older, designated by the owner or owners as the authorized agent for receiving notices of code violations and for receiving process, in any court proceeding or administrative enforcement proceeding, on behalf of such owner or owners in connection with the enforcement of this ordinance. This person must maintain an office in San Miguel County, New Mexico, or must actually reside within San Miguel County, New Mexico. An owner who is a natural person and who meets the requirements of this subsection as to location of residence or office may designate himself as agent. By designating an authorized agent under the provisions of this subsection the owner is consenting to receive and all legal notices regarding the vacant building. The agent's designation for the purposes of this subsection continues until the owner notifies the appropriated department or division thereof of a change of authorized agent or until the owner files an application for a renewal of the vacant building maintenance license.

(2) Any owner who fails to register a vacant building under the provisions of this ordinance shall be deemed to consent to receive, by posting at the building and by regular mail to the owner's address of record in the San Miguel County Assessor's office, any and all notices of code violations and all process in an administrative proceeding brought to enforce code provisions concerning the building.

(G) Procedure for Renewal

(1) At the time of application for a renewal of a vacant building maintenance license, the owner may arrange with the City Manager or designee for the inspection of the building, its premises and interior. If

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the owner fails or refuses to consent to and arrange for an inspection, the application for renewal shall be denied. The City Manager or designee shall renew a vacant building maintenance license on being satisfied after having inspected the building that the building is in compliance with the vacant building maintenance standards set forth in section 5(D); otherwise the City Manager shall deny renewal.

(2) The license renewal shall be for one year, which renewal shall run from the date of expiration of the previously issued or renewed license.

(H) Fees-Commercial, Business, Industrial Property. A non-refundable fee of \$50.00 shall be charged for processing each vacant building maintenance license and for each application for any renewal of a vacant building maintenance license. A separate application shall be completed for each non-contiguous structure, excluding accessory and appurtenant structures to the main structure. Upon approval of any vacant building maintenance license or approval of any renewal of any vacant building maintenance license, a license fee of \$300 shall be paid as a condition of the license or renewal thereof. All fees and penalties assessed pursuant to this Ordinance shall be dedicated to the City's Abatement Fund or similar fund.

Section 6. ENFORCEMENT.

(A) Parties Liable.

(1) Unless otherwise specifically provided, the owner, his agent for the purpose of managing, controlling or collecting rents and any other person managing or controlling a building or premises in any part of which there is a violation of the provisions of this ordinance, shall be liable for any violation therein, existing or occurring, or which may have existed or occurred, at or during any time when such person is or was the person owning or managing, controlling, or acting as agent in regard to said buildings or premises and is subject to injunctions, abatement orders or other remedial orders.

(2) The liabilities and obligations imposed on an owner shall attach to any mortgage company or any other person with or without an interest in the building or premises who knowingly takes any action in any judicial or administrative proceeding that is intended to delay issuance or enforcement of any remedy for any violation of this ordinance; provided that with respect to fines such person shall be liable only for fines which accrue on or after the date of such action; and further provided that no liability shall be imposed under this Ordinance for any action taken in any proceeding, including a proceeding to foreclose on a lien, that does not delay or prevent the prosecution of any action brought by the City Manager or designee to enforce these ordinances.

(B) Civil Penalties

(1) Thirty (30) Days after a building becomes a vacant building with no vacant building maintenance license application, or renewal application, having been submitted, the owner shall be liable for a civil penalty of \$500. The City Manager's designee shall notify the owner as provided in Section 5(F) of the statutory penalty.

(2) The Owner shall have 30 days after notification of the initial \$500 civil penalty to acquire a vacant building maintenance license or to renew a vacant building maintenance license. The City Manager may

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abate all or a portion of the initial \$500 civil penalty if the owner acquires or renews that vacant building maintenance license within the 30 day period after notification of the initial penalty and if the City Manager finds that imposition of the initial \$500 civil penalty would be unjust.

(3) If no vacant building maintenance license is acquired or renewed within 30 days after the notification of the initial \$500 civil penalty, the owner shall be liable for a second \$500.00 civil penalty.

(4) If the owner of the building is continuing to maintain a vacant building without a vacant building maintenance license after being notified, pursuant to Section 5(F), of the second \$500 civil penalty, the City Manager may impose daily civil penalties of up to \$100 per day for every day an owner maintains a building without a vacant building license after receiving notification of the second \$500 civil penalty. Each day after receiving notification of the second \$500 civil penalty is a separate occurrence and a separate violation of this ordinance. The City Manager shall notify, pursuant to Section (f), the owner of the accrual of the civil penalties at least once per week.

(5) The City Manager may abate the second \$500 civil penalty or any subsequent daily penalties only upon the owner affirmatively establishing that the owner was not negligent in failing to comply with this ordinance.

(6) The City Manager may extend the time periods for acquiring or renewing a vacant building maintenance license, if a request for extension is made prior to the expiration of any time period and if the owner or other interested party is engaged in good faith negotiations with the City Manager or City Manager's designee regarding the conditions or requirements of any vacant building maintenance license.

(C) Lien. In addition to being the personal liability of the owner, the civil penalties provided in this ordinance shall be a lien on the property and may be filed and foreclosed in the manner provided by NMSA § 3-36-1 through 3-36-7. With regard to an innocent creditor with a mortgage on the property, the City Manager may subordinate all or part of the civil penalty to the mortgage if the City Manager finds that enforcing the statutory priority of the penalty assessment lien would be unjust under the circumstances.

(D) Criminal Penalties. Any violation of this ordinance may, in addition to any other remedy provided by law, be punished in accordance with the City's Criminal Code Procedure.

(E) Judicial Enforcement. The City Manager may bring an action in any court of competent jurisdiction to acquire preliminary injunctive relief or any other appropriate remedy to enforce this ordinance. The City's costs and attorney fees incurred in any such action shall be a lien on the property that may be filed and foreclosed in the manner provided by NMSA 3-36-1 through 3-36-7.

Section 7. APPEAL

(A) The owner or other interested party may appeal the determination of either (a) the refusal to grant a vacant building maintenance permit, (b) the refusal to renew a vacant building maintenance permit, or (C) any civil penalty provided for in this ordinance. The appeal is to the City of Las Vegas Board of Adjustment by filing an appeal within 30 calendar days of the date of service, pursuant to Section 5 (F) or in person, of the notice of the refusal to grant a vacant building maintenance permit, the refusal to renew a

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vacant building maintenance permit or the notice of any civil penalty provided in this ordinance. Such request shall be made in writing and filed in the Office of the City Clerk. The appeal shall identify the property and state the grounds for appeal together with all material facts in support thereof. A filing fee of \$50 shall accompany each appeal application. When an appeal hearing is requested, the City staff for the Board of Adjustment shall send written notice by certified mail, return receipt requested, to the owner of the time and place of the hearing and shall publish and post notice of appeal hearing. At the hearing the owner or other interested party shall have the right to present evidence as relating to whether the City Manager or City Manager's designee engaged in an abuse of discretion by not approving or renewing a vacant building maintenance license or relating to whether a civil penalty should have been imposed. The Board of Adjustment shall, following the hearing, issue a written decision.

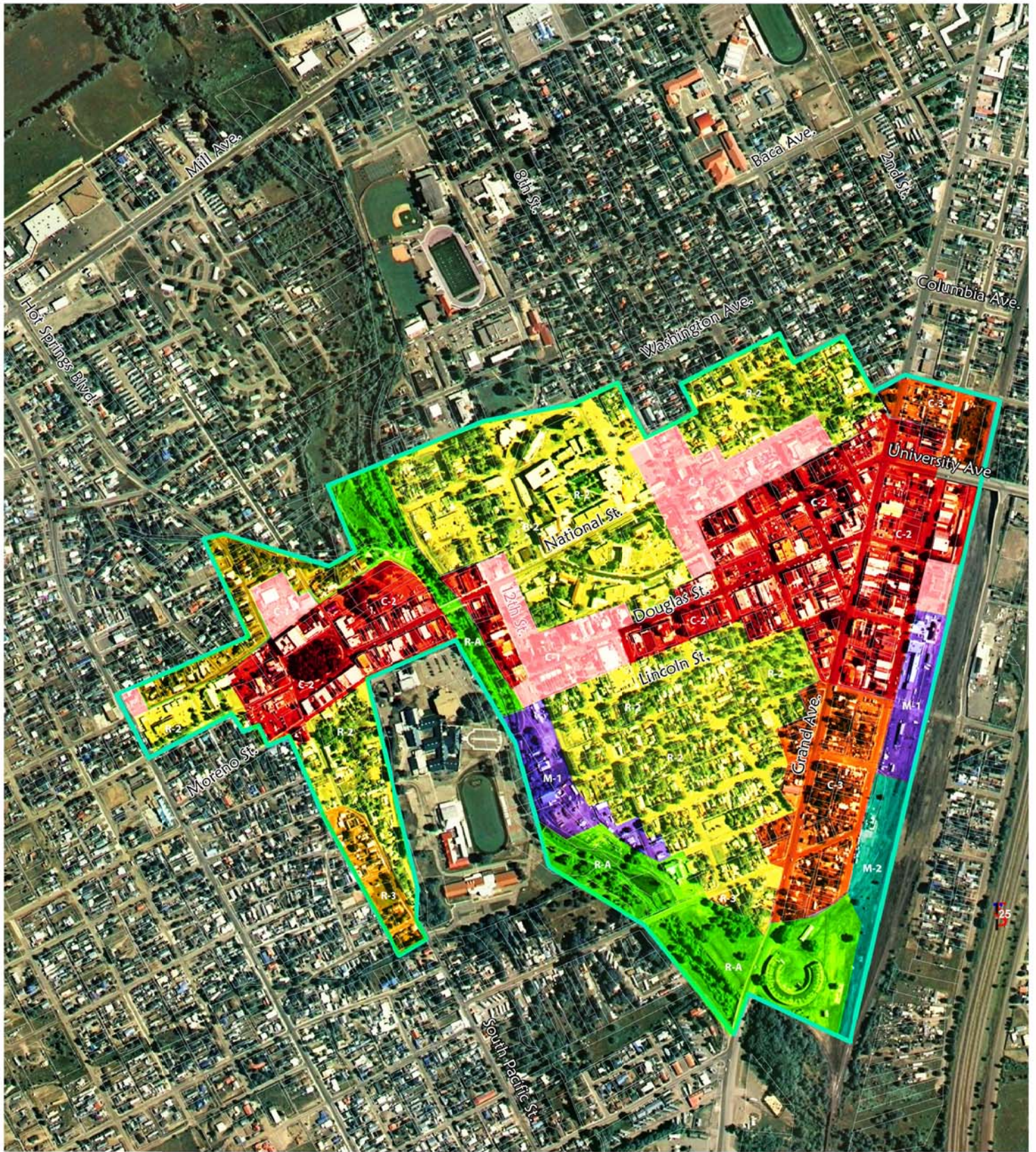
(B) If the City Manager refuses to exercise his discretion to abate, reduce or subordinate a civil penalty that has been properly imposed, such refusal shall not be reviewable by appeal. With regard to civil penalties provided for by this ordinance, the Board of Adjustment's jurisdiction is limited to the issue of whether the penalty was properly imposed. In order to protect the City's interests, a lien for the civil penalty may be filed while the appeal is pending; any lien securing a civil penalty shall be promptly released or partially released if and to the extent the Board of Adjustment rules in favor of the owner or other interested party.

(C) The filing of any appeal shall not stay or otherwise affect any other legal proceedings to enforce any other provisions of these ordinances, including, but not limited to, any to enjoin a nuisance or enforce the Public Nuisance Ordinance.

Section 8. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 9. COMPILATION. This ordinance shall be incorporated in and made part of the Revised Ordinances of Las Vegas New Mexico.

10. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.



LVDAP General Zoning Districts*



*For illustrative purposes only; this is not an official Zone Map.



M-1 Light Industrial Zone



C-1 Neighborhood Commercial Zone



C-3 General Commercial Zone



R-3 Mixed Residential Zone



M-2 Heavy Manufacturing Zone



C-2 Central Business District Zone



R-2 Multi-Family Residential Zone



R-A Residential Agricultural Zone



Map Date: December 29, 2009